

# **Competition in Telecom Is Working. Don't Kill It.**

Testimony

**James K. Glassman**

Resident Fellow, American Enterprise Institute  
Host, TechCentralStation.com

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Mr. Chairman, Mr. Conyers and distinguished members of the committee:

You have called this roundtable forum at a critical time. Telecommunications competition is beginning to work at the local level - in Michigan and in scattered states around the nation. Consumers are benefiting from better service and lower rates. But since the threat to the incumbents has intensified, these firms are fighting back with everything they have. And I don't mean with business innovation and efficiency. That is not their strength.

In this difficult period for the Michigan and the U.S. economy, the benefits of competition are vital. But in Washington and around the nation, the incumbents are working actively to take those benefits away and to establish rock-solid monopoly control of the last mile. I urge you to do all in your power not to let that happen.

## **The Telecommunications Act of 1996**

Some history is in order.

In the early 1980s, Judge Greene broke up Ma Bell, creating a long-distance company called AT&T and seven regional Baby Bells, regulated local-service monopolies. AT&T was immediately plunged into competition with other firms, including Sprint and MCI. The results were better service and far lower rates for consumers. Seeing how well competition worked with long distance, Congress and the President enacted a blueprint, the Telecommunications Act of 1996, to produce the same results for local service. The road has proven far rockier.

The reason is simple. The Bell companies, merged from seven down to four, fought the new law vigorously, with lawsuits and foot-dragging. The act requires their cooperation, and they didn't see it in their best interest to provide it. Now, seven years after the law went into effect, the Bells retain a 92 percent share of the U.S. local market.

## **Competition Arrives with UNE-P**

But things are changing. In the past two years especially, some progressive states, including Michigan, have set reasonable rates for UNE-P (unbundled network elements platform) connections, as the law required. By the end of last year, competitors had won more than 10 million customers nationwide to their own service, using UNE-P connections. The Bells, with their considerable political influence, have tried to block states from exercising their authority to set rates. Their latest attempt was thwarted on Feb. 20, when a new majority emerged at the Federal Communications Commission and prevented the chairman, Michael Powell, from gutting the Telecom Act by having a federal agency supersede state public utility commissions. Still, the FCC did agree to lift requirements that they share certain broadband networks with competitors. This is regrettable, but the local-service decision provides an important boost to competition.

In opposing Powell's plan on local service, many conservative organizations, properly worried about this abrogation of states' rights and about the consequent damage to competition, joined traditionally liberal consumer groups in a broad and surprising coalition.

In a post-mortem on the FCC decision, Business Week reported: "Consumers should do well, since the price of local phone service will likely continue to fall. As carriers battle for their loyalty, customers may also benefit from new services, such as the combination of wireless and traditional phone service under one phone number... Competition will flourish. The FCC's ruling may finally turn the residential market into a competitive battleground like long distance.... With local competition preserved, rivals could increase their share to 25 percent within two years, says telecom analyst Phil Jacobson of Network Conceptions, LLC."

But the Bells are not finished. What they fear the most is real competition. And states around the nation are at last encouraging competition, mainly through UNE-P. It happened last month in California, where the public service commission ordered Verizon to reduce its wholesale prices. The Bells are now concentrating their efforts to strip states of power wherever they can.

But their arguments that states are setting UNE-P rates too low ring hollow. If rates are so low, then why don't the Bells compete against each other, as the law allows? Why doesn't Verizon, for example, take advantage of low UNE-P rates and lease lines in Michigan, competing against SBC? The reason is simple: The rates are not unreasonably low, and the Bells are experts, not in the efficient business management and innovation necessary to competition, but in lobbying and lawyering. What they seek, ultimately, is to become deregulated monopolies - the worst possible solution for consumers.

## **The State of Michigan**

Let me now turn to Michigan. This state's Public Service Commission has been one of the strongest advocates in the nation - perhaps THE strongest - for fair prices and appropriate UNE-P rates. Commissioner David Svanda is chairman of the National Association of Regulatory Utility Commissions (NARUC) and, with fellow Public Service Commissioner Bob Nelson, has been a

leading national spokesperson for using UNE-P to bring competition to local telecom service and, thus, benefits to consumers and small businesses.

Recent use of UNE-P has begun to turn around a dreadful situation for Michigan consumers. Before UNE-P, Michigan local rate increases were among the highest in the nation. In Detroit, for example, the average local phone bill had gone from \$19.04 in 1991 to \$26.68 in 2001, an increase of 40 percent, compared to a rise of 19 percent in Chicago and a *decline* of 6 percent in Cleveland. And Detroit is far from the worst sufferer in Michigan. For example, rates rose 67 percent over that 10-year period in Saginaw.

But UNE-P is starting to change all that. With competition, SBC has been forced to cut its rates or lose a flood of customers. This is the way markets are supposed to work. For example, on Dec. 12, 2002, in an article headlined, "Baby Bells Lose Clients to AT&T, WorldCom," Yochi J. Dreazen of the Wall Street Journal pointed out that every day nearly 2,000 Michigan residents switch their local phone service from SBC. As a result, over the past four months, SBC has "cut the prices on many of its local packages by as much as 30 percent."

In New York, 5 million consumers have changed phone providers and, according to a study, are saving up \$324 annually per line. As Dreazen writes, "The Bells could be excused for having thought this day would never come. As recently as the beginning of this year, the Bells looked invincible after the demise of hundreds of upstart local companies whose creation was prompted by the Telecommunications Act of 1996." In just the last six months of 2002, the number of UNE-P connections nationwide has increased by one-third.

### **Long-Distance Application**

Rather than compete head-on, the Bells - and especially SBC, which has adopted a more stubborn strategy than the others - have decided to obstruct. Stark evidence of SBC's recalcitrance (and, thus, its poor treatment of consumers) can be found in the story of its so-called 271 application. Under the Telecommunications Act of 1996, the incumbent local service providers were permitted to enter long distance, state by state, after they opened their networks to competition by meeting a 14-point checklist and received approval at the state and federal level. Bell companies in more than two-thirds of states have won 271 approval. But not SBC in Michigan.

The reason is simple: SBC cannot be trusted. On Feb. 26, the U.S. Department of Justice said it could not support the application, finding that "serious questions remain regarding SBC's change management practices, line-loss notification procedures, billing errors and the reliability of its reported performance data." The FCC will issue a decision by April 16, but enormous doubts remain, both at the federal and state level.

While the 271 application is pending, SBC has not attempted to push through legislation in Lansing to limit state authority, as the Bells have done around the country. But it's almost certainly coming.

As for UNE-P, the incumbent in Michigan has indicated that it would like to see wholesale rates

doubled - which, by the way, would make SBC's retail rates lower than its wholesale rates. It is vital for the Public Service Commission here to hold the line.

Leasing unbundled elements is the best way to move toward the goal that most of us seek: vigorous facilities-based competition. Look at what happened in long distance. AT&T was required to lease lines at large discounts to firms like MCI and Sprint. Eventually, these companies built a large enough customer base to justify building networks of their own. The same will happen in local service. Or, perhaps, new technology will work its way easily around the last mile. But that's in the future. Today's control of the last mile constitutes a stranglehold on competition. The Telecom Act - passed, by the way, with the vote of every conservative in Congress -- sought to break that stranglehold for the good of the economy and of consumers.

### **Structural Separation and Fair Access**

Since, however, the Telecom Act has been ignored and debased at every turn by the incumbents, a more vigorous remedy may be necessary. To his credit, the chairman of the House Energy and Technology Committee, Ken Bradstreet, has introduced a bill that would require SBC and Verizon to separate their wholesale operations from their retail operations, giving "fair access" to all retailers. The bill is the best answer to ensuring that the state's basic telecom infrastructure, built on the backs of Michigan's telephone users with guaranteed profits for the monopolies over the past century, is available to all companies that want to service the state's families and businesses.

### **Broadband Investment**

Finally, let me turn to broadband, that is, high-speed connections to the Internet. The Bells have argued for years that the fact that they must share their advanced networks with competitors (at a price, of course) deterred their investment in broadband, thus harming consumers. They wanted to be liberated, so they could invest. Before the Feb. 20 decision, Verizon said that the action would "remove regulatory obstacles that substantially hinder investment in broadband technologies." And Network World, a trade publication, quoted analyst John Cordova of Infonetics as saying that the Bells "could begin investing in more equipment, such as broadband-enabled digital loop carriers, ATM switches, routers and softswitches, as a result of the FCC decision."

But that's not the way the Bells saw it. Immediately after the ruling, they changed their collective mind and said that, since they lost the UNE-P vote, they wouldn't make serious broadband investments - even though the two decisions were utterly unrelated. Your own Rep. John Dingell, ranking member of the House committee with telecom oversight, said, "I have read in recent days...that certain Bell [CEOs] have announced that they will not invest in advanced networks because they did not receive all the relief they were seeking. I hope this is not true."

But it *is* true. Jonathan Krim wrote in the Washington Post on Feb. 25 that "two of the four former Bell companies, SBC Communications and BellSouth Corp.,...renewed promises made after the vote that they would not invest in new, high-speed Internet networks" until the FCC changes its view on UNE-P. "The companies' posture angered several government industry

executives, who accused the phone companies of the political equivalent of holding their breath to get more candy after getting what they originally asked for.”

This attitude, however, should not be surprising. Economic reality drives these firms. It is a tried-and-true principle of economics that companies make investments - not when they enjoy a protected monopoly or near-monopoly position - but when they are being hard-pressed by competitors. The Bells had DSL broadband technology for a decade before they rolled it out. They kept it on the shelf until competition forced them to make DSL available to customers, or lose them. Similarly, if the Bells can kill off broadband competitors by denying them access to their networks, what incentive will the Bells have to improve those networks?

Please forgive me if this testimony is too Bell-centric. I hope these companies will be in the vanguard of innovation and consumer service, but that is highly unlikely. It is more aggressive firms, with a culture of scrappy competitiveness, that will provide the kind of low-cost benefits that the people of Michigan want and need. Public policy should be directed toward encouraging such firms to thrive - not with subsidies or special breaks, but with the ability to get into the arena that, until now, has been the playpen of monopolists alone.

My message is that competition at last is working. Don't kill it.

Thank you.